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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Price Cap Performance Review for Local Exchange Carriers	CC Docket No. 94-1

OPPOSITION TO PETITIONS FOR RECONSIDERATION

The NYNEX Telephone Companies

Edward R. Wholl
Joseph Di Bella

1300 I Street, N.W., Suite 400 West
Washington, DC 20005
(202) 336-7894

Their Attorneys

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OPPOSITION TO PETITIONS FOR RECONSIDERATION

The NYNEX Telephone Companies[1] ("NTCs") hereby file their Opposition to the Petitions for Reconsideration of the Commission's *LEC Price Cap Review Order*[2] in the above-referenced proceeding.[3]

I. Introduction and Summary.

In the *LEC Price Cap Review Order*, the Commission adopted interim revisions to its price cap rules for the local exchange carriers ("LECs") pending further development of the record in the next phase of this proceeding.

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[1] The NYNEX Telephone Companies are New York Telephone Company and New England Telephone and Telegraph Company.

[2] Price Cap Performance Review of Local Exchange Carriers, CC Docket No. 94-1, *First Report and Order*, FCC 95-132, released April 7, 1995 ("*LEC Price Cap Review Order*"); *erratum*, released April 26, 1995.

[3] Petitions for Reconsideration were filed by Ad Hoc Telecommunications Users Committee ("Ad Hoc"); AT&T Corp. ("AT&T"), and MCI Telecommunications Corp. ("MCI").

Nothwithstanding the fact that the rules are interim in nature, the petitioners seek reconsideration of the Commission's findings regarding X-Factors, sharing, the lower formula adjustment ("LFA"), the common line formula, and other issues. In particular, they argue that the X-Factors were based on productivity factors that were too low and that the Commission erred in adopting a no-sharing option for LECs that select the 5.3% X-Factor and in not eliminating the LFA. They also take the Commission to task for not adopting a per-line formula for the common line basket, for not requiring exogenous treatment of the amortization of equal access and network reconfiguration costs, for not requiring re-initialization of the price cap indexes for changes in the cost of capital, and for allowing the LECs additional pricing flexibility.

The petitioners establish no basis for reconsideration of the *LEC Price Cap Review Order*. They do not raise any arguments or present any evidence that the Commission has not already considered in reaching its decision. Their arguments that the Commission should have adopted higher X-Factors are contrary to the voluminous evidence that the LECs, the United States Telephone Association ("USTA") and other parties placed in the record of the proceeding. Although NYNEX does not agree with all aspects of the Commission's order, particularly insofar as it requires the LECs to make up-front reductions in their price cap indexes ("PCIs") to take into account the revision of the minimum X-Factor and the change in exogenous treatment of accounting for other postretirement employee benefits ("OPEBs"),[4] the issues raised by the petitioners do not warrant reconsideration.

II. The Petitioners Present No Basis For Increasing The X-Factors.

The petitioners argue that the interim X-factors that the Commission adopted in the *LEC Price Cap Review Order* were too low and that the minimum factor should be a high as 5.7%.[5] However, they present no arguments and they cite no data that was not considered and rejected by the Commission in reaching its decision.

AT&T contends that the Commission's X-Factors will permit the LECs to maintain productivity factors that are far below their performance since price cap regulation was established, as evidenced by their earnings reports.[6] MCI also suggests that the Commission's selection of a 4.0% minimum factor is inconsistent with evidence that LEC productivity has increased.[7] The Commission already considered and rejected these contentions. Although the Commission indicated that long-term productivity factors should incorporate

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[4] *See LEC Price Cap Order* at paras. 248, 309.

[5] *See* Ad Hoc Petition at pp. 2-4; AT&T Petition at pp. 2-5; MCI Petition at pp. 2-5.

[6] *See* AT&T Petition at p. 3. AT&T alleges that the LEC earnings demonstrate an aggregate productivity of 5.54% under price caps.

[7] *See* MCI Petition at pp. 3-5.

LEC productivity changes since the institution of price cap regulation, it found that there was insufficient data on the record to select an X-Factor on that basis.[8]

The petitioners suggest that the decisions of several LECs to choose the 5.3% productivity factor in their 1995 Annual Access Tariff Filings shows that the 4.0% X-Factor is too low.[9] This argument is without merit. First, the Commission anticipated that each LEC would choose the X-Factor that was closest to its own implicit X-Factor.[10] Therefore, the fact that some of the LECs chose the highest X-Factor does not demonstrate that the 4.0% baseline X-Factor is incorrect for the industry as a whole. As the Petitioners concede, four of the price cap LECs chose the 4.0% X-Factor for some or all of their tariff entities.[11] This represents 33% of the total interstate revenue under price caps. If these LECs were experiencing higher productivity, they would have had an incentive to choose the higher X-Factors, which have more liberal sharing zones, or no sharing in the case of the 5.3% factor. Third, LECs that elected the 5.3% X-Factor may have made that choice in order to eliminate sharing, and not because they are already achieving that level of efficiency. Moreover, the fact that the no-sharing option is part of an interim rule may have caused some LECs to elect the 5.3% X-Factor this year even if they might not have felt capable of sustaining that

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8 *See LEC Price Cap Review Order* at para. 145. USTA has demonstrated that an X-Factor could not be based on earnings reports, as proposed by AT&T, because earnings are a poor measure of LEC productivity growth. *See* USTA Reply Comments, June 29, 1994, at p. 59.

9 *See* AT&T Petition at p. 5; MCI Petition at p. 5; Ad Hoc Petition at pp. 5-6.

10 *See LEC Price Cap Review Order* at para. 213.

11 *See, e.g.,* AT&T Petition at p. 4.

level of productivity over the long term. No conclusion can be drawn about industry productivity simply because some of the LECs were attracted by the advantages of the no-sharing option in the 1995 annual filing.

Ad Hoc argues that the Commission erred in relying upon USTA's updated total factor productivity ("TFP") study in adopting the 4.7% and 5.3% X-Factors.[12] In support of this argument, Ad Hoc asserts that the Commission did not explain why it relied upon the USTA study and why it rejected specific criticisms of the updated USTA study, particularly with respect to USTA's inclusion of 1990-92 data in the study. These arguments are not well founded. The *LEC Price Cap Review Order* demonstrates that the Commission considered all of the arguments and data on the record.[13] The Commission explained its reasons and its methodology for adopting the three X-Factors and for rejecting alternative proposals.[14] USTA included the post-price caps LEC productivity data in the updated study at the request of the Common Carrier Bureau, to provide a more complete record of LEC productivity performance. The Bureau evaluated the USTA data in corroborating the Commission's findings concerning the X-Factor. Ad Hoc has submitted no new information that would warrant reconsideration of these findings.

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12 *See* Ad Hoc Petition at pp. 2-3.

13 *See LEC Price Cap Review Order* at paras. 101-143, 204-216 and Appendices E and F.

14 *See id.* at paras. 210-216 and Appendix F at pp. 9-14.

Ad Hoc maintains that the Commission erred in using total company TFP, instead of interstate productivity, in selecting the X-Factor.[15] Ad Hoc argues that interstate TFP is higher than intrastate TFP "because if for no other reason, demand for interstate services has grown faster than the demand for intrastate services."[16] The Commission specifically considered and rejected the proposal to calculate TFP on an interstate basis, finding that :

> No party has argued that the production functions (the technological relationship between inputs and outputs) significantly differ for intrastate and interstate services in ways that can be readily measured or separated. Indeed, intrastate and interstate services are largely provided over common facilities. We therefore tentatively conclude that TFP should be calculated on a total-company, rather than interstate basis.[17]

Ad Hoc fails to present any arguments that would warrant reconsideration of that conclusion.

Ad Hoc contends that *Smith v. Illinois Bell Telephone Co.*, 282 U.S. 133 (1930) requires the Commission to rely only upon interstate-specific TFP.[18] Ad Hoc is incorrect. *Smith* only holds that a telephone company's costs must be allocated between state and interstate jurisdictions so that the Commission and the state regulatory commissions can establish reasonable rates for services

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[15] *See* Ad Hoc Petition at pp. 10-13.

[16] *See id.* at p. 11.

[17] *LEC Price Cap Review Order* at para. 159. The Commission also stated that "To the extent that parties can establish in the further notice that inclusion of intrastate performance data introduces a systematic downward bias in the TFP, we believe it preferable to address such a problem directly, rather than attempting to construct an interstate factor based on regulatory accounting and other regulatory requirements that may not fully reflect economic costs." *Id.*

[18] *See* Ad Hoc Petition at pp. 12-13.

within their respective jurisdictions under the Communications Act. As Ad Hoc concedes, *Smith* does not address the issue of whether carrier TFP must be calculated separately for state and interstate communications services.[19]

The Commission's use of total company TFP to calculate the X-Factor does not, as Ad Hoc alleges, result in the abdication of the Commission's responsibilty to set rates based only on interstate costs. The initial price cap rates, which were established under rate of return principles, were based on jurisdictionally separated interstate costs. The ongoing price cap rates are also based on interstate costs insofar as costs are used to set the end user common line rate, to establish rates for new services, and to calculate interstate rates of return for sharing and lower formula adjustments. The Commission decided to rely upon total company TFP for the X-Factor based on its findings that "intrastate and interstate services are largely provided over common facilities" and that "production functions (the technological relationship between inputs and outputs) [do not] significantly differ for intrastate and interstate services in ways that can readily be measured or separated."[20] These findings form a rational basis for selecting an X-Factor in the price cap formula. Ad Hoc has not shown that the use of this factor in the price cap formula results in interstate rates that are excessively high or confiscatorily low.[21] For these reasons, Ad Hoc has not

[19] *See id.*

[20] *LEC Price Cap Review Order at para.* 159.

[21] The Commission indicated that if a party can show that demand differences between jurisdictions causes a downward bias in the TFP factor, the Commission would address the issue directly in the further notice in this proceeding. *See id.*

presented sufficient facts to show that the Commission's reliance on total company TFP is inconsistent with its statutory obligation to establish rates based on interstate costs.

MCI insists that the record in this proceeding does not support the Commission's election of a 3-tiered approach to the X-Factor.[22] The Commission adopted X-Factors of 4.0%, 4.7%, and 5.3%, with different sharing and lower formula adjustment rules, to reflect the "heterogeneity" of past LEC productivity performance.[23] MCI argues that there in no heterogeneity because "LECs have all increased their productivity levels as evidenced by the increases in their rates of return" and because "any variance in their earnings is not due to heterogenous performance, but is due to specific one-time, up-front charges taken by the LECs."[24] These arguments are baseless. First, increases in earnings do not directly correlate with increases in productivity. Second, the fact that all of the LECs *increased* their earnings under price caps does not mean that they all had the *same* earnings. It simply means that price caps had the intended effect of encouraging the LECs to become more efficient. In fact, LEC rates of return were disparate throughout the period under price caps.[25] Third, MCI offers no evidence for its allegation that any variance among the LECs in earnings is due to differences in one-time accounting adjustments. The record in this proceeding

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[22] *See* MCI Petition at pp. 5-8.
[23] *See, e.g., LEC Price Cap Order* at paras. 165, 194.
[24] *See* MCI Petition at p. 6.
[25] See *LEC Price Cap Order*, para. 193, Appendix C, Table 5.

shows that both productivity levels and rates of return vary *significantly* among the LECs, which fully supports the Commission's decision to adopt a multi-tiered price cap plan.

The fact that some companies opted for the 5.3% no-sharing option while others elected the minimum 4.0% option shows that the LECs have different expectations about their levels of productivity and earnings. This highlights the heterogeneity across the LECs and the need for a multi-tiered price cap plan. Given the record on LEC performance in this proceeding and the Commission's sound justification for the development of a multi-tiered plan, there are no grounds for reconsideration of this issue.[26]

III. The Commission Should Not Eliminate The No-Sharing Option Or The Lower Formula Adjustment.

The petitioners argue that the Commission should not have eliminated sharing for LECs that choose the 5.3% X-Factor but that the Commission should have eliminated the lower formula adjustment ("LFA") for all X-Factors.[27] Once again, the petitioners present no arguments that the Commission has not already considered and rejected.

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[26] See *id.*, paras. 213, 215.

[27] *See* MCI Petition at pp. 9-17; AT&T Petition at pp. -10; Ad Hoc Petition at pp. 5-10.

MCI argues that the Commission gives no explanation, and provides no basis, for its decision to remove sharing when a LEC chooses a 5.3% productivity offset. This argument has no merit. In the *LEC Price Cap Review Order*, the Commission explained that elimination of sharing would provide an incentive for LECs to choose the 5.3% option, which the Commission characterized as a "major challenge" given its findings about long-term LEC productivity.[28] MCI may not agree with that explanation, but it clearly states the basis for the Commission's decision.

MCI's real disagreement with the no-sharing option concerns the 5.3% X-Factor. MCI argues that 5.3% is not significantly above the LECs' historic productivity, either in the long term or since the establishment of price caps.[29] However, as NYNEX has demonstrated above, MCI's arguments that the Commission should have chosen higher X-Factors are meritless. Thus, MCI's opposition to the no-sharing option rests on a false premise.

MCI also argues that the Commission cannot eliminate the sharing mechanism because the LECs are dominant carriers, and because Section 201 of the Act requires the Commission to limit the earnings of dominant carriers.[30] The Act requires no such thing. Section 201 requires <u>rates</u>, not earnings, to be reasonable. Earnings limitations are a product of Commission rules, not the

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28 *See LEC Price Cap Review Order* at paras. 19, 220.
29 *See* MCI Petition at p. 11.
30 *See id.* at pp. 11-14.

Communications Act.[31] Here, the Commission properly found that earnings limitations are unnecessary with regard to the 5.3% factor. Moreover, regardless of whether a LEC's rates are within the price cap limits, MCI or any other access customer may file a Section 208 complaint alleging that the LEC's rates violate Section 201 of the Act, if the complainant can show that the rates are unreasonable. Sharing does not affect the issue of reasonableness in any way. Therefore, it has nothing to do with the Commission's responsibility to enforce Section 201 of the Act. Finally, it should be noted that the Commission has not adopted a sharing rule for AT&T, despite the fact that AT&T remains a dominant carrier.

MCI also argues that, without sharing, the 5.3% option would allow the LECs to raise their rates to unreasonable levels.[32] This is ludicrous. The 5.3% option will require LECs to reduce their rates by an additional 1.3% per year compared to the base X-Factor. Such required rate reductions would prevent the LECs from using their alleged market power to increase their rates.

AT&T and MCI argue that the lower formula adjustment ("LFA") mechanism should be eliminated.[33] They argue that the LFA has been used by a few LECs to recoup one-time, up-front accounting charges for "downsizings"

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[31] The courts have upheld the Commission's ability to require the LECs to refund excess earnings when the LECs have violated the earnings limitations that the Commission has prescribed under its authority in Section 205 of the Act. *See, e.g., New England Telephone & Telegraph Co. v. FCC*, 826 F.2d 1101 (D.C. Cir. 1987), *cert. denied* 490 U.S. 1039 (1989).

[32] *See id.* at p. 13.

[33] *See* AT&T Petition at pp. 8-10, MCI Petition at pp. 15-17.

intended to achieve greater efficiency and increased future earnings. The petitioners, in particular, cite the LFA that NYNEX included in its 1992 access rates as an example of an LFA caused by one-time adjustments. MCI states that the LFA is unnecessarily redundant because LECs may file for above-cap rates and may seek a waiver of the price cap rules as needed. Neither argument is valid.

The arguments raised by AT&T and MCI concerning one-time adjustments are not new. The same arguments were raised as part of the 1992 Annual Access Tariff Filing proceeding. In that proceeding, AT&T and MCI argued that the Commission should have excluded one-time expense accruals in the calculation of the rate of return on which to base the LFA, because a single year's return should not trigger a lower formula adjustment.[34] In response, NYNEX demonstrated that both the LFA and sharing are based on the prior year's earnings, and that in order to qualify for a LFA, a LEC has to demonstrate a rate of return below10.25% for a single prior year, not a period of years as the commenters had suggested.[35] Therefore, one-time adjustments are appropriately included in the rate of return calculation for both sharing and the

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[34] AT&T continues to assert that the LFAM was intended to avoid prolonged LEC underearnings. *See* AT&T Petition at p. 8.

[35] *See* 1992 Annual Access Tariff Proceeding, Reply Comments of the NYNEX Telephone Companies, filed May 14, 1992, Appendix A.

LFA. The Common Carrier Bureau agreed with NYNEX, finding that NYNEX's LFA was entirely consistent with the Commission's rules.[36]

Moreover, as NYNEX pointed in the 1992 Annual Access Tariff Proceeding, the expense accruals that NYNEX took in the fourth quarter of 1991 were not unusual; most LECs, and AT&T as well, recorded large expense accruals due to down-sizing and write-offs of investments.[37] The major difference between NYNEX and the other LECs is that NYNEX entered price caps with rates that were significantly below the level necessary for NYNEX to achieve its authorized rate of return. In the 1990 Annual Access Tariff Proceeding, which established the initial rate levels for price caps, the Commission disallowed over $200 million of NYNEX's projected rates.[38] This caused NYNEX to earn significantly below the authorized rate of return from the

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[36] *See* Memorandum Opinion and Order Suspending Rates and Designating Issues for Investigation, In the Matter of 1992 Annual Access Tariff Filings, released June 22, 1992, paras. 11-12. In that order, the Bureau declined to "look behind a carrier's reported total interstate earnings to decide whether a particular cost should be counted for the purpose of applying the low end adjustment mechanism or sharing."

[37] *See* 1992 Annual Access Tariff Proceeding, Reply Comments of the NYNEX Telephone Companies, filed May 14, 1992, Appendix A. As pointed out in NYNEX's comments, the price cap system was designed to encourage the LECs to become more efficicent. Efforts to become more efficient almost always involve higher initial costs, and accounting accruals for one-time restructuring costs are necessary when a company becomes more efficient by instituting force reductions. Indeed, AT&T recorded $3.6 billion in restructure charges in 1991. *See id.* at p. 8, n.16.

[38] In the Matter of Annual 1990 Access Tariff Filings, CC Docket No. 90-320, Memorandum Opinion and Order, DA 90-845, released June 21, 1990.

date that the 1990 rates went into effect.[39] For the two quarters after the July 1, 1990 rates went into effect, New England Telephone ("NET") earned 9.98% and 10.23% rates of return, respectively, while the authorized rate of return was 12 percent.[40] Nonetheless, the Commission subsequently rejected a NYNEX midcourse tariff filing to increase rates in the New England area.

For these reasons, it would be inaccurate to characterize NYNEX's 1992 LFA solely as the result of one-time accounting adjustments. Even if it were, one-time adjustments are a normal occurrence in the telecommunications industry. In the *LEC Price Cap Review Order,* the Commission stated that it has been monitoring fourth quarter accounting adjustments for several years, and it has found no evidence that the adjustments were improper.[41] The Commission should not eliminate the LFA simply because such adjustments, like other cost accruals, affect a company's earnings.

In the *LEC Price Cap Review Order,* the Commission rejected MCI's argument that the LFA is unnecessary because LECs can make above-cap filings or file waivers if their rates are so low as to be confiscatory.[42] The Commission found that these mechanisms are burdensome to the Commission, the LECs, and

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[39] *See* New England Telephone and Telegraph Company, Tariff FCC No. 40, Transmittal No. 1109, filed December 21, 1990. For calendar year 1990, NET earned 9.66 percent. *See* NET ARMIS 43-01 Report filed April 1, 1991. NET's 1991 rate of return without restructuring costs would have been 9.45 percent.
[40] NET Form 492 reports filed December 31, 1990 and March 31, 1991. NET earned a 10.2 percent rate of return for the 1989-90 reporting period. See NET Form 492 Report filed September 30, 1991.
[41] *See LEC Price Cap Review Order* at para. 234.
[42] *See id.* at para. 223.

the consumers. As the Commission noted, it has established a high hurdle for above-cap filings, requiring extensive cost support and promising "lengthy investigation."[43] Waiver requests for above-cap rates would also be very difficult for a LEC to obtain, as such requests would have to be based on some unforeseen error in the price cap rules or on special circumstances that would make the price cap rules unreasonable for a particular LEC. In addition, the Commission found that it may not be reasonable for the Commission to require sharing for high earnings while not allowing an LFA mechanism for low earnings, citing the court's reversal of the Commission's previous rate of return enforcement rule, which required refunds of overearnings with no remedy for underearnings.[44] MCI presents no arguments on this issue that the Commission has not already considered and properly rejected.

IV. The Record Is Not Sufficient For The Commission To Adopt A Per-Line Carrier Common Line Formula At This Time.

AT&T and MCI assert that the Commission errred in not adopting a per-line formula for the common line basket in the *LEC Price Cap Review Order*.[45] They

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[43] *See id., citing* Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6823-24 (1990) ("*LEC Price Cap Order*"). [43] In the *LEC Price Cap Order,* the Commission decided that approval of above-cap filings was "unlikely," that such filings would be suspended for the full 5-month statutory period, and that approval of such filings would subject the LEC to a unitary rate of return, essentially taking it out of price caps.

[44] *See id.* at para. 304 & n.400.

[45] *See* AT&T Petition at pp. 10-13; MCI Petition at pp. 19-21.

disagree with the Commission's findings that it should resolve this issue in the further notice of proposed rulemaking so that it can determine the necessity for a per-line formula if the Commission adopts a productivity factor based on TFP, and that adoption of a per-line formula at this time would create excessive rate churn and confusion.[46] The petitioners argue that the Commission could have adopted a per-line formula in the interim based on the current productivity factor and that it could require the LECs to re-set their rates if and when the Commission establishes a new productivity factor.

The petitioners point to no flaws in the Commission's reasoning. Given that the Commission intends to consider the TFP method for measuring productivity in the longer-term, and that adoption of a TFP factor might make an adjustment to the common line formula unnecessary, any adjustment to the common line formula is best considered when the method for determining the productivity factor is resolved. Conversely, the choice of a productivity factor is dependent upon which common line formula is chosen. If the common line formula is changed, the productivity measure must also reflect that change. Since the productivity factor and the common line formula are inter-related, and since the Commission only adopted an interim plan in the *LEC Price Cap Review Order*, the Commission had ample grounds for deciding not to adopt a significant change in the common line formula at this time.

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[46] *Cf. LEC Price Cap Review Order*, paras. 271-72.

V. The Commission Should Not Re-Initialize The PCI For Changes In The Cost Of Capital.

The petitioners seek reconsideration of the Commission's decision not to require the LECs to re-initialize their PCIs for any changes in the cost of capital since price caps were established.[47] AT&T repeats arguments that it made in its previous comments that the Commission should require the LECs to make an additional $322 million PCI reduction to account for the reduction in the cost of capital from 1991-93. MCI argues that, in rejecting arguments about changes in the cost of capital, the Commission only addressed changes in the cost of debt.

There has been extensive debate on the issue of capital costs in this proceeding. In the *LEC Price Cap Review Order*, the Commission summarized the comments and it evaluated all of the issues raised by the commenters.[48] The Commission found that there were no changes in the LECs' cost of capital that would have required rate changes even if the LECs were under rate of return regulation.[49] Therefore, the Commission decided not to require a one-time PCI reinitialization for changes in the cost of capital.[50] Contrary to the petitioners' arguments, these findings were not limited to an evaluation of the cost of debt. The petitioners present no arguments that the Commission has not already considered and properly rejected.

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[47] *See* AT&T Petition at pp. 5-6; MCI Petition at pp. 18-19.
[48] *See LEC Price Cap Review Order* at paras. 232-41, 255.
[49] *See id.* at para. 232.
[50] *See id.* at para. 255.

VI. The "Economic Cost Standard" For Exogenous Adjustments Is Inappropriate.

MCI argues that the new "economic cost" standard that the Commission will apply in deciding whether to grant exogenous cost treatment to changes in accounting standards is unnecessarily vague and cumbersome to implement, and that it will result in many long and contentious proceedings before the Commission.[51] MCI proposes that the Commission adopt a different standard based on whether an accounting change would "shift money out of or into the interstate jurisdiction."

NYNEX agrees with MCI that the economic cost standard is vague and ill-defined. Moreover, by applying this standard only to changes in accounting rules, such as OPEBs, the Commission inexplicably fails to recognize that other exogenous cost changes, such as the reserve depreciation amortization ("RDA") and amortization of inside wire costs, do not meet the "economic cost standard" any more than OPEBs.[52] However, MCI's proposal raises additional issues. Literally, MCI's proposed definition of exogenous costs would only include changes in separations rules. It would not, as MCI supposes, include the treatment of cost changes for the RDA or inside wire.

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[51] *See* MCI Petition at p. 22.

[52] *See LEC Price Cap Review Order* at para. 309.

A sweeping redefinition of exogenous cost changes goes beyond resonsideration of the *LEC Price Cap Review Order*. The Commission should consider this issue in its long-term review of the LEC price cap rules.

VII. There Is No Basis For Treating Equal Access Cost Recovery As Exogenous.

In its Petition for Reconsideration, AT&T again argues that the Commission should have required exogenous cost treatment for equal access and network reconfiguration ("EANR") costs.[53] The Commission has rejected this argument on several occasions. In the *LEC Price Cap Order*, the Commission found that exogenous cost treatment of EANR costs was not warranted.[54] In subsequent annual access tariff proceedings, the Commission rejected AT&T's arguments that the LECs should have made exogenous cost changes for EANR costs.[55] AT&T presents nothing new in its petition for reconsideration. The Commission need not and should not reconsider its decision on this issue.[56]

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[53] *See* AT&T Petition at pp. 13-18.

[54] *See LEC Price Cap Order*, para. 180.

[55] *See, e.g.*, 1994 Annual Access Order, CC Docket 94-65, 9 FCC Rcd 3519, 3535-36 (Common Carrier Bureau 1994).

[56] Any exogenous cost treatment of EANR costs would require a rule change. At this point, such a rule change could not be applied retroactively to EANR cost changes that occurred in the past. If the Commission did try to apply a revised exogenous cost rule to past EANR costs, it would also have to apply that rule to cost increases that the LECs absorbed in the past, without exogenous treatment, such as equal access costs associated with public payphones and costs of additional CIC codes.

VIII. The Commission Should Not Reconsider The Limited Pricing Flexibility That It Allowed In The LEC Price Cap Review Order.

MCI argues that the Commission should reconsider its decision to allow the LECs additional downward pricing flexibility (minus 10% in category and sub-category bands for traffic sensitive and trunking baskets, and minus 15% in zone indexes).[57] Its arguments should be rejected.

First, MCI contends that the additional downward flexibility may allow some individual rates to increase more than under the current plan. However, this is not correct. Only the lower limits were changed; the upper limits remain unchanged. The category and sub-category upper banding limits still severely constrain price movements for rates among various service categories (*e.g.*, local switching, DS1, DS3, tandem switched transport). Therefore, while some rates may be decreased more than before, other rates cannot be increased by any additional amounts to make up the difference.

Second, MCI contends that the FCC did not explain why the increased downward flexibility was necessary or what effect it would have on competition. This is not correct. In paragraphs 408-411 of the *LEC Price Cap Review Order*, the FCC thoroughly discussed the basis for this change. The order explained that there was sufficient evidence in the record that lowering bands

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[57] *See* MCI Petition at pp. 23-24.

would be in the public interest because movement to economically efficient rate levels would benefit consumers. Relative to the development of competition, the order explained that since the first price cap order, the FCC had authorized competition through expanded interconnection and that allowing LECs to reduce their rates would facilitate the development of efficient competition. In addition, the order also explained that the lower band limits were intended to represent floors against predatory pricing, that predation would be unlikely, and that there remain in place other mechanisms to address any potentially predatory prices. These findings fully justify the Commission's decision to allow additional pricing flexibility.

IX. Conclusion.

The petitioners repeat arguments that the Commission thoroughly considered and rejected in the *LEC Price Cap Review Order*. The Commission should reject the Petitions for Reconsideration.

Respectfully submitted,

The NYNEX Telephone Companies

By: Joseph Di Bella

Edward R. Wholl
Joseph Di Bella

1300 I Street, N.W., Suite 400 West
Washington, DC 20005
(202) 336-7894

Their Attorneys

Dated: June 29, 1995

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CERTIFICATE OF SERVICE

I hereby certify that copies of this pleading were mailed this date, first class postage prepaid, upon the persons listed on the attached service list.

Joseph Di Bella

Dated: June 29, 1995